

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Appropriate Framework for Broadband)	
Access to the Internet Over Wireline)	CC Docket No. 02-33
Facilities)	

**COMMENTS OF
THE ALLIANCE FOR PUBLIC TECHNOLOGY**

April 15, 2002

I. Introduction

The Alliance for Public Technology (APT) welcomes the opportunity to comment on the regulatory requirements for wireline broadband telecommunications services and the general state of advanced telecommunications services and the Federal Communications Commission's role in implementation of Section 706 of the 1996 Telecommunications Act.

APT is a nonprofit organization comprised of public interest groups and individuals that have been advancing the need for ubiquitous deployment of advanced telecommunications services throughout our nation for more than a decade. The issue in this proceeding is not simply about definitions. The appropriate framework must be constructed so that broadband is readily available to all Americans. The life-enhancing applications of the technology have the potential to: bring better and more affordable health care to all citizens; expand educational opportunities for lifelong learning; enable independent living for senior citizens and people with disabilities; create opportunities for jobs and economic advancement, as well as the ability to control one's own finances;

make government more responsive to all citizens; and simplify access to communications technology. Without a regulatory framework that encourages deployment, millions of Americans will be unable to enjoy these benefits.

In order to fully recognize the potential of advanced telecommunications services, every sector of our nation must have affordable and useable access to them. To that end, APT developed the concept of “connecting each to all”¹ (i.e. networks gain their value by having everyone connected) and articulated the following goal of advanced universal service that is now embodied in Section 706 of the 1996 Act:

Make available as far as possible, to all people of the United States, regardless of race, color, national origin, income, residence in rural or urban area, or disability high capacity two-way communications networks capable of enabling users to originate and receive affordable and accessible high quality voice, data, graphics, video and other types of telecommunications services.²

In the intervening years, APT has consistently urged the Commission to consider the impact of Section 706 for every proceeding. It is clear that our nation needs a strong federal commitment to the advanced universal service goals of the 1996 Act. It is equally clear that it is long past time for the FCC to use its full authority under Section 706 to remove barriers and create incentives for industry’s rapid deployment of advanced services.

This Notice of Proposed Rulemaking (NPRM) asks important questions regarding acceleration of deployment of advanced services. Given the disparity in broadband access, the Commission must ascertain the flaws in deployment and seek remedies which

¹ *Connecting Each to All*, Alliance for Public Technology, 1993

² *Principles to Implement the Goal of Advanced Service*, Alliance For Public Technology, at 3 (1995).

will bring broadband to all Americans in a reasonable and timely fashion, as called for by Section 706. The issues raised in this Notice address some of the compelling problems currently hampering the rollout of advanced services.

Particularly, APT will address the following items presented in the NPRM:

1. How should wireline broadband be defined?
2. Does Section 706 have relevance to this proceeding?
3. What regulatory obligations should be enacted?
4. If a regulatory framework is necessary, how could such a framework reduce regulatory burdens and promote the availability of broadband?
5. How should the Universal Service framework for broadband services be constructed?

These questions must be addressed within the context of the development of a national broadband policy. Americans cannot enjoy the life-enhancing applications made possible by advanced telecommunications services without rapid deployment of the necessary infrastructure. APT firmly believes that advanced telecommunications services can improve quality of life in all communities. But this cannot be realized until it is recognized that deployment of the technology must take place quickly and continuously through the combined efforts of public and private institutions.

II. How should wireline broadband services be defined?

The Commission has tentatively concluded that wireline broadband services should be defined as “information services.” APT believes this classification is inappropriate, because the definition only applies to the information element of broadband. It ignores the transportation of data, which is a crucial aspect of broadband. A

more appropriate framework is one that combines the definitions, because broadband encompasses both information and telecommunications services.

As the NPRM asks, “Should it [wireline broadband] instead be classified as a new kind of hybrid communications service, neither an information service nor a telecommunications service?” This approach better addresses the true nature of broadband. These advanced services do not conform to the definitions from the voice and video era. Broadband incorporates the functions of “information services” and the transport features of “telecommunications services.” The two components, functions and transport, cannot be separated for definitional purposes. To do so would undermine the unique characteristics of broadband, because it is the high-speed data transport that enables the applications.

A different definitional framework must be employed. Instead of attempting to form a definition from various regulatory proceedings, it is possible to look at parameters already constructed in the 1996 Telecommunications Act. Section 706 of the Act outlines a regulatory model for broadband that creates a workable definition and establishes guidelines for deployment.

III. Does Section 706 have relevance to this proceeding?

As stated previously, Section 706 has direct relevance to this proceeding and should in fact be considered with every proceeding at the Commission. Section 706 calls for deployment of “advanced telecommunications capability” to all Americans on a reasonable and timely basis. In seeking to define broadband services, the Commission should look no further than Section 706. This statute frames broadband in subsection (c) as:

Advanced Telecommunications Capability – The term “advanced telecommunications capability” is defined, without regard to any transmission media or technology, as high-speed, switched broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video telecommunications using any technology.³

This framework encompasses the provisions of “information services” and “telecommunications services.” The technology neutral basis of this definition covers all the broadband platforms (cable, DSL, satellite, wireless) and addresses the transport elements in “telecommunications service.” The named applications of the technology (high quality voice, data, graphics and video) mirror the uses cited in “information services.” The Commission has recognized the usefulness of this definition in the NPRM⁴ and should adhere to this framework.

The term “broadband telecommunications” has been linked to advanced services and advanced telecommunications capability in the Commission’s work on Section 706. The Commission has stated that “broadband” is an elusive concept, and thus has defined advanced services and advanced telecommunications capability as services with bandwidth in excess of 200 kilobits per second (kbps) in the last mile.⁵ While APT believes that assigning particular speeds in the definition unnecessarily limits the scope of the services, the Commission has already *de facto* equated broadband with these advanced telecommunications capabilities.

The Commission should embrace the definition of advanced telecommunications capabilities and utilize its expansive parameters to construct a broadband regulatory

³ Section 706 (c) (2) of the Telecommunications Act of 1996, Pub. Law 104-104, Title VII, February 8, 1996, 110 Stat. 153

⁴ See *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33 at paragraph 29 (Released February 15, 2002)

⁵ See *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33 at paragraph 3 and n. 2 (Released February 15, 2002) and *First Report*, 14 FCC Red at 2406-09.

framework that neither hinders deployment and competition nor ignores the needs of consumers. Section 706, the guiding principle of the 1996 Act for advanced universal service, provides an excellent model for broadband regulation.

IV. What regulatory obligations should be enacted?

If the Commission is to adopt the “advanced telecommunications capacity,” or another hybrid definition, some regulatory provisions from the “telecommunications service” definition still need to apply. The Commission can be selective in the regulations it chooses to enforce. Section 401 (a) of the Telecommunications Act of 1996 empowers the Commission to forbear from applying regulations if the enforcement is not necessary for protection of consumers or if the forbearance is consistent with the public interest.⁶ Section 706 also calls for regulatory forbearance and the promotion of competition. The Commission should exercise this authority to retain the consumer protection provisions attached to the “telecommunications service” definition.

Primarily, the common carriage obligations of telecommunications service must be preserved. An open network is critical to ensuring ubiquitous access. The recent decision to classify cable modems as “information services” sets a dangerous precedent for allowing closed networks. APT has consistently called for a network of networks, where all consumers can interconnect regardless of the platform they utilize. Section 251 (a) of the Telecommunications Act explicitly mandates such interconnection. Broadband, as an advanced telecommunications capability and also adhering to its status as a telecommunications service, must be held to this standard.

A second feature of common carriage and interconnection is adherence to Section 255 of the Telecommunications Act, which provides for non-discriminatory access for

people with disabilities. This is a critical component. Networks will not be completely interconnected if the technology is inaccessible to segments of the population.

Section 706 also empowers the Commission to remove barriers to infrastructure investment. This is vital for broadband deployment. Currently, regulations from the voice and video era are hampering deployment and investment. The Commission must remove the constraints that have been carried over into the broadband world. For example, LATA boundaries, the lines drawn to regulate long distance service, constrain broadband transport because they were designed for voice traffic. These artificial barriers must be eliminated for data traffic. This could lead to increased capacity on broadband networks and allow more people to have access. In addition, below cost pricing and unbundling requirements hamper timely deployment and must be addressed.

Whatever regulatory structures the Commission chooses, they must be applied in a technology neutral fashion. Regulatory parity must govern Commission decisions. The platform on which broadband services are delivered does not change the nature of the service. Broadband via cable, phone, satellite or wireless is still broadband. The regulations must not deviate based on the technology of the service provider.

These actions are consistent with provisions of the Telecommunications Act that were designed to foster competition and bring advanced services to all Americans. The regulatory environment should embrace the consumer protection aspects needed and discard the old regulations that are hindering deployment.

V. If a regulatory framework is necessary, how could such a framework reduce regulatory burdens and promote the availability of broadband?

As stated previously, a regulatory framework based on Section 706 and Section

⁶ 47 USC 401

401 will remove the current burdens while continuing to protect consumers and promote deployment. The goal of Section 706 is universal deployment, and the proposed regulations are consistent with the provisions of that statute. This regulatory framework relies on current law and precedent and does not create new roadblocks.

Maintaining the interconnection and accessibility provisions of common carriage does not increase regulatory burdens and continues the Commission's role as protector of the public interest. These rules ensure that service providers and carriers are able to connect to other networks, leading to greater choices for consumers and more people using the systems, which increase network value. Interconnection also leads to innovation, allowing providers to devise new products and services that are beneficial to consumers. These policies should apply to the whole broadband market, consistent with the technology neutral approach of the "advanced telecommunications capability" definition. Interconnection is the fundamental principle of a network of networks. APT maintains that such a network is the true goal of broadband and the value of this network can only be expanded through increased participation.

The key to this framework is forbearance. The Commission must examine the regulations currently in place that are slowing deployment. If these regulations are found to be detrimental, then the Telecommunications Act empowers the Commission to bypass the provisions so that services become available to all Americans. It is long past time for the Commission to implement Section 706 and use the power of forbearance where it is appropriate.

Adoption of the proposed framework would advanced the feasibility – as recommended in past APT filings – of the Commission partnering with state regulators to

accelerate deployment of broadband technologies. Stronger working relationships with the states are needed to encourage community-based partnerships structured to (1) develop investment incentives designed to craft broadband applications which are relevant to the lives of people and businesses in underserved communities, and (2) in the process, advance real markets for broadband services which are responsive to the needs, priorities and cultures of marginalized areas, urban and rural.

VI. How should the Universal Service framework for broadband services be constructed?

The Commission must continue to uphold the principles of universal service as it moves into the broadband era. The system must be preserved so that support structures are in place as communications technology evolves and becomes even more pervasive in everyday life. Universal service must also be equitable and non-discriminatory, ensuring access to communications technology for all Americans. Section 254 of the Telecommunications Act of 1996 requires the Commission periodically to evaluate the definition of services supported by universal service, recognizing that “universal service is an evolving level of telecommunications services.” Evaluation will be critical to universal service; the Commission must remain vigilant to update the parameters as the technology changes.

The NPRM asks two questions about the application of universal service contributions. “Should facilities based wireline broadband Internet access providers – both wireline telecommunications carriers and ISPs - be subject to the same contribution requirements?” and “Should other facilities based providers of broadband Internet access services, as legal matter or as a policy matter, be required to contribute?” The answer to

both questions is yes. As universal service evolves to incorporate broadband services in the future, the contributions to the system must be derived from all participating carriers. This is a component of maintain and equitable system.

Universal service must remain a constant element of telecommunications policy. The guarantees laid down in the Telecommunications Act must continue regardless of the shape of the technology. It has been recognized that telecommunications services are essential and universal service ensures that all Americans have the opportunity to access these services and not fall behind. The Commission must never allow this principle to lapse. Section 706 demands that that deployment of advanced telecommunications capability be extended to all Americans.

VII. Conclusion

Section 706 set a clear mandate for the deployment of advanced telecommunications capability and there is broad agreement that creation of an advanced national telecommunications infrastructure is essential. Broadband must be regulated in a technology neutral format, networks must be open, accessibility features must be universal, old regulations that hamper deployment must be removed, and incentives for investment must be created. APT respectfully urges the Commission to examine the problems of deployment from the perspective of Section 706 and adhere to the advanced universal service goals set forth. APT envisions a world where advanced telecommunications capabilities are equitable and accessible for all Americans. The Commission must take prompt action and use the powers it has been granted by the Telecommunications Act to make this world a reality.

Respectfully submitted,

Matthew D. Bennett
Policy Director
Alliance for Public Technology
919 18th Street, NW
Suite 900
Washington, D.C. 20006